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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,036	07/30/2003	John J. Giobbi	47079-0107D1	9450

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EXAMINER
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YOO, JASSON H

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/630,036	<b>Applicant(s)</b> GIOBBI, JOHN J.	
	<b>Examiner</b> Jasson Yoo	<b>Art Unit</b> 3714	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_  
 Claim(s) objected to: \_\_\_\_\_  
 Claim(s) rejected: 1-74.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See attached form.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because: Regarding claims 1, 2, 5-7, 12, 13, 22, 25, 27-28, 30-32, 37, 41-42, 44-46, 51-52, 60, 63, 65; applicants argue the combination of Raven et al. (US 5,429,361) and Sizer et al. (US 5,923,252) is not obvious.

In response to applicants' argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In response to applicants' argument that Raven et al. in view of Sizer et al. is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

In this case, Raven et al. disclose a player tracking system for a gaming machine that displays a wagering game (displays of gaming device in Fig. 1 displays wagering game described in col. 3:68-4:57) wherein data carried on a player's portable data unit is used to access monetary information from the player's monetary account stored at a central host computer, the player's account is associated with the personal identifier; monetary information is transmitted from the central host computer to gaming machine and a game is played on the machine using the transmitted information. See, e.g., fig. 1-3; col. 1:38-2:3, 10:37-11:62. Furthermore, when the player is not interacting with the machine, the player tracking system enters an "attract mode" wherein promotional messages are displayed. See col. 5:15-29. Once the portable data unit is read, the device displays personalized information. See fig. 2. Raven et al. disclose all the features of the listed claims except establishing a wireless link with the portable data unit when the unit with within proximity to the gaming machine, but without inserting the portable data unit in the gaming machine. Regardless, as discussed below, this feature would have been obvious to a gaming artisan in view of Sizer et al.

Sizer et al. disclose an audiovisual marking device capable of detecting a portable data unit carried by a person allowing the device to automatically interact with the person within proximity of the device using personalized information contained on the data unit. See col. 6:4-17; 16:14-32. For example, at a trade show or exhibition a person may be given an RF card containing information on the person. See col. 6:4-17; 16:14-32. When that person approaches a device, the device detects the portable data unit and delivers information to the person, which is personalized according to the identity information contained on the portable data unit. See col. 6:4-17; 16:14-32. The system is directed at the attracting customers to interact with point-of-sale devices at retail establishments and tracking the customer's interactions. A casino is merely a specialized type of retail establishment where the point of sale devices are gaming machines. Furthermore, Sizer et al. disclose acquiring a portable data unit from a data unit provider, the portable data unit including a second wireless transceiver; positioning the portable data unit in proximity to the machine, without inserting the portable data unit into any portion of the machine, to establish a wireless transmission link between the first and second wireless transceivers; and transmitting information between the portable data unit and the machine via the wireless transmission link. See col. 6:4-17; 16:14-32. In view of Sizer et al., it would have been obvious to one of ordinary skill in the art of gaming devices to modify the player tracking system disclosed by Raven et al., wherein the machine displays an attract mode to players until it reads information contained on a player's portable data unit and then displays personalized information, to add the feature of establishing a wireless link with the portable data unit when the unit with within proximity to the gaming machine, but without inserting the portable data unit in the gaming machine. As suggested by Sizer et al., the modification would increase players' use of gaming devices by initiating personalized attraction displays when players pass within proximity of the gaming device; and at the same time, collecting statistical information on players' interest to increase the effectiveness of future displays. See col. 8:6-49, 15:66-16:32, 22:10-36.

In response to applicants' argument that the teachings of the combination of Raven et al. and Sizer et al. is not obvious because Raven et al. teach away from the claimed invention, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Raven et al. teach a player tracking system for a gaming machine using a portable device as claimed except for the wireless feature. Applicant argue Raven et al. teach the portable device used for the player tracking device must be inserted into the gaming machine, and therefore teach away from the wireless portable device used for the player tracking device. Although Raven et al. lack the wireless feature for the player tracking device, Raven et al. player tracking device does not away from the claimed invention. The insertion of the portable device (player tracking card) applicant cited from Raven et al., is a procedure practiced for the machine to obtain the player tracking information, because the portable device is not wireless. However this procedure would be not be necessary if the player tracking information was wireless, taught by Sizer et al. as discussed above in the previous action. Therefore the combination of Raven et al. and Sizer et al. teach the claimed invention.

Regarding claims 10, 35, and 49, applicant argue Raven et al. do not disclose encrypting the transmitted information. The data taken from the smart (memory card) by the card reader and converting the 7-bit card data to hexadecimal is considered to be encryption (cols. 3:38-62, 5:9 - 9:14).

Regarding claims, 17 and 55, applicants argue Raven et al. do not disclose the game customization information adapts to the players preferences. Although some of the parameters are "casino-defined" the game customization information may adapt to the players preferences (cols. 3:38 - 4:61, 8:14-33, 9:61-68).

